BEFORE THE
CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

In the Matter of:

DINO WEBB, JR.
(Claimant-Respondent)

PRECEDENT
BENEFIT DECISION
No. P-B-42
Case No. 68-2620

S.S.A. No.

QUALITY LINEN SUPPLY
(Employer-Appellant)
c/o The Gibbens Company

Employer Account No.

The employer appealed from Referee's Decision No. OAK-7277 which dismissed the employer's appeal from a determination of the California Department of Employment on the ground that the employer was not a proper party.

STATEMENT OF FACTS

The claimant was last employed by the above employer for five months as a wrapper, plant laborer and janitor in Sparks, Nevada. The claimant was discharged by the employer February 19, 1968 under circumstances which for reasons which will be set forth hereinafter are not material to the issue herein.

The employer in question is a Nevada corporation which does business in both Nevada and California. Its principal operation is at Sparks, Nevada, known as the Sparks Laundry, but it currently has employees at Bijou, California, and until one year ago, had employees in Sacramento. The company is registered with the California Department of Employment under Account No. 167-0146 and reports its Bijou employees under this account number.

The wages upon which the claim for benefits rests were earned in California for other employers prior to employment at Sparks. No services were rendered by the claimant to the employer at any of its California operations.

A Notice of Additional Claim Filed was mailed to the employer by the department on February 27, 1968. The employer responded timely on February 29, 1968 on the department's form, giving information regarding the claimant's termination of employment. The department issued a determination to the employer on March 29, 1968 holding that the claimant was discharged for reasons other than misconduct. The employer filed a timely appeal from that determination to a referee by letter postmarked April 5, 1968.

REASONS FOR DECISION

Section 135 of the Unemployment Insurance Code provides:

> "135. 'Employing unit,' means any individual or type of organization, including, but not limited to, a joint venture, partnership, association, trust, estate, joint stock company, insurance company, corporation whether domestic or foreign, public housing administration agency, whether operated by state or local governmental subdivisions, the State of California with respect to service performed by a blind or physically handicapped worker, who does not hold a civil service or permanent tenure position, in connection with his employment by the State of California for work in the California Industries for the Blind, any instrumentality of the United States required to make payments under this division, and the receiver, trustee in bankruptcy, trustee or successor thereof, and the legal representative of a deceased person, which has, or subsequent to January 1, 1936, had, in its employ one or more individuals performing services for it within this State. All individuals performing services within this State for any employing unit which maintains two or more separate establishments within this State shall be deemed to be employed by a single employing unit for all the purposes of this division."

Section 675 of the code provides:

> "675. 'Employer' means any employing unit, which for some portion of a day, has within the current calendar year or had within the preceding calendar year in employment one or more individuals and pays wages for employment in excess of one hundred dollars ($100) during any calendar quarter." (Emphasis added)

The issue in the present case is whether a California last employer is entitled to notice of determination and right to appeal therefrom although its individual reserve account would not be chargeable with any benefits paid to the claimant since no wages were paid by it to the claimant in California.

We recognize that in Abelleira v. The District Court of Appeals (1941), 109 P. 2d 942, 17 Cal. 2d 280, the Supreme Court of the State of California held that the appellants did not have recourse to the courts until the administrative processes had been exhausted, and that the interest of the employers in the Unemployment Fund was not so large as to require the issuance of a writ of mandate to prevent the payment of unemployment benefits to unemployed workers. The court stated that the payment of benefits did not constitute an immediate and irreparable injury as to warrant the drastic step of interfering with an uncompleted administrative proceeding in defiance of an established rule of jurisdiction.

However, the instant case involves a much narrower issue. It deals with not the avoidance of an administrative proceeding but the observance of it to permit all proper parties to the proceeding to participate meaningfully in it by granting notice and an opportunity to be heard on the merits if the procedural requirements have been met.

Sections 1326 through 1333 of the code establish the administrative machinery by which a claim for benefits is filed. Provisions are made for appropriate notices to interested parties and for reconsideration by the department and appeals to referees.

The two sections immediately involved are sections 1327 and 1328, which provide as follows:

> "1327. A notice of the filing of a new or additional claim shall be given to the employing unit by which the claimant was last employed immediately preceding the filing of such claim, and the employing unit so notified shall submit within 10 days after the mailing of such notice any facts then known which may affect the claimant's eligibility for benefits.
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> "1328. The facts submitted by an employer pursuant to Section 1327 shall be considered and a determination made as to the claimant's eligibility for benefits. The claimant and any employer who prior to the determination has submitted any facts or given any notice pursuant to Section 1327 and authorized regulations shall be promptly notified of the determination and the reasons therefor and may appeal therefrom to a referee within 10 days from mailing or personal service of notice of the determination. The 10-day period may be extended for good cause. The director shall be an interested party to all appeals."

In Benefit Decision No. 6117, we considered a case which presented a situation analogous to the present one. In that case, the employer had stores in New York and San Francisco. The claimant worked at the New York store and left that employment in order to move to California. She had wage credits in her base period from other California employers but had never worked for her last employer in California. We held, relying solely on the statutory definitions of "employing unit" and "employer" as contained in sections 8.5 and 9 of the Unemployment Insurance Act (now sections 135 and 675 of the Unemployment Insurance Code), that the employer was entitled to notice of claim filed under section 67(b) of the Act (now section 1327 of the code), and since the employer had submitted information under section 67(c) of the Act (now 1327 of the code), was entitled to be notified of the determination and to appeal therefrom under section 67(d) of the Act (now 1328 of the code).

Since the codifying language is for all material purposes practically identical to the language in the Act, we reaffirm our prior decision in this matter and hold that this employer is a proper party to the proceeding and entitled to a hearing and decision on the merits.

DECISION

The decision of the referee is reversed. The employer is a proper party. The matter is remanded to a referee for necessary procedures leading to a decision on the merits.

Sacramento, California, April 8, 1969.

CALIFORNIA UNEMPLOYMENT INSURANCE APPEALS BOARD

ROBERT W. SIGG, Chairman

LOWELL NELSON

CLAUDE MINARD

JOHN B. WEISS

DON BLEWETT